

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 23 January 2023

Public Authority: Department for Education (DfE)
Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested information from the DfE relating to the proposed sale of part of the Morgan Road playing field site owned by Reading School. The DfE disclosed some information but refused to disclose the remainder citing regulation 12(5)(e) and 13 of the EIR.
2. The Commissioner's decision is that the DfE is entitled to rely on regulations 12(5)(e) and 13 of the EIR for all remaining withheld information, except the name of the current developer.
3. The Commissioner requires the DfE to take the following steps to ensure compliance with the legislation.
 - Disclose the name of the current developer to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 1 March 2022, the complainant wrote to the DfE and requested information in the following terms:

“a. Maps/plans/photos – showing the specifics of the present and proposed layouts.

b. Appendices 5(a) and 5(b), cited in support of items 2(j), 2(m), 5(c), 5(d) and 5(e).”

The request relates to the proposed sale of part of the Morgan Road playing field site owned by Reading School.

6. The DfE responded on 29 March 2022. It disclosed some information but withheld the remainder, citing regulation 12(5)(e) and 13 of the EIR.
7. The complainant requested an internal review on 30 May 2022. This was completed on 17 June 2022 and the DfE upheld the application of the exceptions cited. It did however disclose some further information.

Scope of the case

8. The complainant contacted the Commissioner on 21 June 2022 to complain about the way their request for information had been handled.
9. During the Commissioner’s investigation further information was disclosed to the complainant. This notice will focus on the remainder of withheld information and the application of regulation 12(5)(e) and 13 of the EIR.
10. The Commissioner has reviewed the withheld information and received additional submissions. With the exception of one piece of information (the name of the current developer), he is satisfied that regulation 12(5)(e) and 13 of the EIR apply. The following section will explain why.

Reasons for decision

Regulation 12(5)(e) – commercial interests

11. Regulation 12(5)(e) of the EIR allows a public authority to withhold information if its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

12. The exception is subject to the public interest test.
13. The remaining withheld information concerns the potential sale of a piece of land to allow development. It is therefore commercial in nature. In terms of confidentiality, the remaining withheld information is not trivial or otherwise publicly available. It contains confidential commercial details relating to the proposed sale and potential development and therefore has the necessary quality of confidence. Both the school and the developer are also subject to confidentiality provisions in an exclusivity agreement.
14. In terms of the adverse effects disclosure would cause, the DfE has stated that at the time of the request the sale of the land had not reached completion, nor had contracts for sale been exchanged between the school and developer. To date there has also been no planning application made for the proposed development. The remaining withheld information therefore remains live, particularly in relation to its commercial sensitivity.
15. If the remaining withheld information was disclosed it would adversely affect the school's negotiating position, as developers would have access to information that would put them at a commercial advantage. The school commissioned a report from Savills to obtain its opinion on the market value of the land and its potential to deliver land for redevelopment purposes. The findings may differ from any assessment or due diligence developers have done themselves in relation to potential profit that the development of the land could deliver. Access to this information would allow developers to see exactly what independent advice the school has received and tailor ongoing commercial negotiations accordingly. It would adversely affect the school's ability to secure the best possible terms it can.
16. For the above reasons the Commissioner is satisfied that regulation 12(5)(e) applies to all remaining withheld information. But this is with the exception of the name of the current developer.
17. The DfE has now disclosed all the developers that were initially approached by the school in relation to the proposed sale and development of land. It has however continued to refuse to disclose the name of the current developer on the basis that it would breach the confidentiality provisions of the exclusivity agreement and open up the school to potential damages. It said that it would however disclose the name of the current developer once planning consent has been applied for.
18. The Commissioner does not consider a confidentiality clause alone is sufficient to rely on regulation 12(5)(e) of the EIR. The school and/or

the developer would still need to explain how disclosure would adversely affect their commercial interests. If it cannot, or has not (which is the case here), it is difficult to accept that the developer could bring a claim of damages against the school. No details of the potential land price or ideas for successful development are being disclosed; just the name of the developer currently in discussions with the school. The Commissioner does not agree the developer would be easily deterred from continuing with this deal if its name was disclosed. Locals often object to local developments and they can be directed to the appropriate channels once any planning application is submitted.

19. The Commissioner therefore requires the DfE to disclose the name of the current developer, as he has reached the decision that regulation 12(5)(e) of the EIR does not apply to this information.
20. For the remaining withheld information that is exempt under regulation 12(5)(e) of the EIR, it is now necessary to consider the public interest test.
21. There is a public interest in openness and transparency and in allowing members of the public access to information which will enable them to see what the current proposals are and how these are likely to benefit the school and the wider community.
22. However, at the time of the request the proposals were still very much live and at idea and early negotiation stage. No deal had been signed, sale taken place or planning application submitted. Disclosure at this stage would damage the school's ability to continue exploring this option and, if it goes ahead, secure the best possible price for the land and wider benefits for its school and pupils. This is not in the wider interests of the public. The public interest rests in protecting the school's ability to negotiate fairly and competitively. If and when the proposal moves on to planning, it will be subject to the statutory planning process which will allow locals and concerned members of the public to scrutinise the plans put forward and raise any supporting statements or objections.
23. For these reasons, the Commissioner has decided that the public interest rests in maintaining the exception.

Regulation 13 – personal data

24. Regulation 13 of the EIR allows a public authority to refuse to disclose information if it constitutes the personal data of a third party and disclosure would be in breach of the data protection principles outlined in the Data Protection Act and GDPR.
25. The DfE has withheld the names and other personal data of the junior staff working at Savills.

26. The Commissioner is satisfied that regulation 13 of the EIR applies to this information. The disclosure of the information provided to date meets the legitimate interests in disclosure. Disclosure of this personal data would not add to those legitimate interests and so it is not necessary. Junior members of staff would also hold the expectation that their personal information would not be disclosed to the world at large. It would therefore cause them some level of distress and upset.

Right of appeal

27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF